

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Ft. Worth Division

ERGUN CANER,

Plaintiff,

v.

JASON SMATHERS,

Defendant.

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Civil Action No. 4:13-cv-00494 (Y)

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**DEFENDANT'S *NUNC PRO TUNC* MOTION FOR ENLARGEMENT OF TIME TO
FILE HIS REPLY IN SUPPORT OF HIS PETITION FOR ATTORNEYS' FEES**

NOW COMES Defendant Jason Smathers to respectfully move the Court to extend his filing deadline for his Petition for Attorneys' Fees, Dkt. #54, by two days until 7 June 2014.

Smathers requests this extension due to excusable neglect. His Petition for Attorneys' Fees was due on 1 May 2014, but he filed it at 1:02 AM CDT on 2 May 2014, along with a Motion for Enlargement of Time explaining why the petition was filed late. (*See* Def.'s *Nunc Pro Tunc* Mot. Brief Enlargement of Time to File Pet. Att'ys' Fees, Dkt. #57 (filed May 2, 2014).) Presuming (perhaps incorrectly) that this request for a reasonably brief extension would be granted, the undersigned calendared Plaintiff's Opposition as being due on 23 May 2014 (twenty-one days from the filing of the Petition) instead of 22 May 2014, which would make Smathers' Reply due today, 6 June 2014. Plaintiff filed his Opposition to this Petition at 11:27 PM on 22 May 2014, causing an email to be sent to the undersigned, which was dated 23 May 2014 because of the time zone difference. When the undersigned saw this email on the morning of 23 May 2014 (since he was asleep by the time it was sent), he wrongly assumed that

Plaintiff's Opposition had been filed on that day and frankly did not think to examine the *time* the email was sent that closely.¹ Accordingly, he did not change his calendar, which still read that his Reply would be due today. He did not notice the oversight until today, when he was working on Smathers' Reply.

Smathers asks for an additional day until tomorrow, 7 June 2014, because, while the undersigned was working on this Reply, he was forced to stop working on it and focus all his attention on an unexpected development in another case that had to be addressed today. He is still working on that matter and expects to do so for the next several hours, but stopped long enough to file this Motion in hopes that the Court would have an opportunity to see it before the close of business today. He is aware that tomorrow is a Saturday and that filings are not normally made on the weekend, but he quite simply does not need the entire weekend to finish this Reply and is fully willing to complete the work tonight and tomorrow for a weekend filing.

As indicated above, Smathers requested a brief extension for his Petition, which has not yet been adjudicated. He has not requested any previous extensions for this filing. Plaintiff's counsel advises that Plaintiff opposes this Motion. A proposed Order consistent with the relief sought also accompanies this Motion.

¹ This oversight was exacerbated by the fact that 23 May 2014 was the Friday before Memorial Day weekend and the undersigned was not working that day.

Date: June 6, 2014

Respectfully submitted,

/s/ Kelly B. McClanahan

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